

(1950) 01 KL CK 0008
In the High Court Of Kerala
Case No : C.R.P. No. 158 of 1950

Kunji Ammal Kalyani Ammal

APPELLANT

Vs

Krishnan Kochu Krishnan and Another

RESPONDENT

Date of Decision : 23-01-1950

Acts Referred:

Citation : AIR 1954 Ker 150

Hon'ble Judges : V.S. Subramanya Iyer, J

Bench : Single Bench

Advocate : Bhoothalingom Iyer, for the Appellant; O.L. Abraham and N. Padmanabha Panicker, for the Respondent

Final Decision : Allowed

Judgement

Subramonia Iyer, J.—This is connected with C.R.P. 441 of 1125 in which pending the disposal thereof, this Court ordered a stay of proceedings in the original suit. In communicating that order of stay, however, the office of the High Court appears to have committed a mistake in noting the year of the suit. Instead of mentioning the year 1124 the communication mentioned the year 1123. As this communication thus related only to the stay of proceeding in O.S. 547/1123, the Court below proceeded with the trial of O.S. 547/1124. When the mistake was discovered the Plaintiff applied to this Court to have the mistake rectified and for the issue of an order of stay of proceedings giving the correct year of the suit.

Before the corrected order of stay reached the lower Court, however, it had proceeded with the trial and, in fact, disposed of the suit, not allowing an application by the Plaintiff for time. The Plaintiff's application for time, not having been allowed, he defaulted in the prosecution of the suit. Thereafter, pointing out the aforesaid circumstances and the mistake committed by the Court the Plaintiff made an application for restoration of the suit to the file. That application was dismissed by the Court below and this revision is directed against that order of dismissal.

2. Mr. O.L. Abraham, learned Counsel for Defendant 1, Respondent 1, alone opposes this petition. Learned Counsel for Respondent 2 who appeared for the Respondent in C.R.P. 441 of 1125 does not oppose. Mr. Abraham contends in support of the view taken by the Court below that the dismissal of the suit having been on if he merits, an application for its restoration will not lie, and, therefore, this revision also will not lie. Though the Plaintiff may have adduced evidence in the case, if on the last day, on which the suit comes up for disposal, he does not appear for conducting the case though he might have appeared to apply for time, which not having been granted, he ceased, to appear thereafter, it is not competent for the Court to pass a decree on the merits.

The CPC provides the proper procedure to pursue in a case, where the Plaintiff does not appear to prosecute the suit at whatever stage it may be. If the Plaintiff does not appear, the Court is to proceed as though there was default in prosecution and dispose of the suit for that reason, which if done, the defaulting Plaintiff would be entitled to make an application, which would be considered upon its merits. Now in this case, as is obvious from the circumstances stated already, even apart from an application by the Plaintiff, the Court, when it was intimated that a mistake was committed by the office of the High Court, was bound to set right the mistake committed by it, and restore the suit to file. No party should be adversely affected by a mistake of the Court or of any of its officers. This is fundamental.

Had the Court below applied this fundamental principle, it would have found it necessary to restore the suit even without an application by the Plaintiff. But even after the Plaintiff had made an application, the attitude of the Court below, in not having allowed it, cannot be supported. The view taken by the Court below, viz., that the disposal was on the merits and, therefore, a petition for restoration will not lie is unsound. Even though the disposal may purport to be on the merits, if the Court should not have disposed of the suit on the merits, because the Plaintiff defaulted in appearing, the disposal has to and will be regarded as one for default.

3. No party should be denied a right available to him under the law by a wrong procedure pursued by a Court. The order passed by the Court below cannot, therefore, be supported in which is hereby set aside and the civil revision petition allowed with costs to be paid by Respondent 1.